

# Memorandum

October 23, 2009

TO: Members of the Bar and Public

FROM: Louise York, Reporter to the Local Rules Committee

RE: PROPOSED AMENDMENTS TO LOCAL RULES OF PRACTICE

The Committee on the Local Rules of Practice is releasing all proposed amendments for public comment. The comment period will end on November 6, 2009. Comments may be sent by mail or by email ( [Louise\\_York@utd.uscourts.gov](mailto:Louise_York@utd.uscourts.gov) ).

## Civil Rules

- [DUCivR 7-1](#) The rule is amended to clarify the page limits and filing times for motions and memoranda. The amendment also reflects the time computation changes of the federal rules which will be effective on December 1, 2009.
- [DUCivR 7-4](#) This new rule provides the procedure for civil actions which review the decision of the Commissioner of Social Security.
- [DUCivR 7-5](#) This new rule addresses use of Hyperlinks in electronically filed pleadings.
- [DUCivR 54-2](#) The amendment in subsection (d) reflects the time-computation rule change. The amended subsection (a) shortens the filing time for bills of cost to fourteen days to coincide with the filing deadline for motions for attorneys' fees. The rule also sets fourteen days for filing objections and allows for the filing of a reply brief within seven days of the filing of the objections.
- [DUCivR 56-1](#) The method for submitting supplemental authority is amended to be consistent with the prior amendment of DUCivR 7-1.
- [DUCivR 72-3](#) This amendment deletes a provision which is duplicative of the federal rules and adds a subsection to facilitate prompt resolution of objections to non dispositive magistrate judge rulings.
- [DUCivR 77-3](#) This rule is deleted because it is unnecessary. CM/ECF filing provides that orders are noticed to the parties.

[DUCivR 83-1.1](#)

The admission rule is amended to add the newly appointed attorneys of the Federal Public Defender's Office to the newly appointed attorneys of the United States Attorney's Office as eligible for conditional admission for one year pending their admission to the Utah State Bar. Another amendment has been made to require a certificate of good standing for attorneys who apply for admission pro hac vice. The rule also indicates that the court has endorsed the Utah Standards of Professionalism and Civility.

**Criminal Rules**

[DUCrimR 12-1](#)

Ten-day time periods have been modified to fourteen-day periods to be consistent with the time computation changes.

[DUCrimR 47-1](#)

This rule is deleted because the subject matter is now contained in DUCrimR 12-1, and the reference to the civil rule is unnecessary.

[DUCrimR 58-1](#)

Ten-day time periods have been modified to fourteen-day periods to be consistent with the time computation changes.

## **DUCivR 7-1 MOTIONS AND MEMORANDA**

**Approved by the Rules Committee on May 12, 2009**

**Published for comment on the court's website June 2009**

**Reporter's note: The rule is amended to include specific references to the Federal Rules of Civil Procedure to delineate the types of motions which are included in each page limitation and filing time. The committee has further amended the rule to reflect the national time computation rules to be effective on December 1, 2009.**

### **(a) Motions.**

All motions must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Copies shall be provided as required by DUCivR 5-1. Motions must set forth succinctly, but without argument, the specific grounds of the relief sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of civil procedure does not meet the requirements of this section.<sup>1</sup>

### **(b) Supporting Memoranda.**

(1) Memoranda of Supporting Authorities. Except as noted below or otherwise permitted by the court, each motion must be accompanied by a memorandum of supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:

- (A) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;
- (B) to continue either a pretrial hearing or motion hearing;
- (C) to appoint a next friend or guardian ad litem;
- (D) to substitute parties;
- (E) for referral to or withdrawal from the court's ADR program;
- (F) for settlement conferences; and
- (G) for approval of stipulations between the parties.

(2) Concise Memoranda. Memoranda must be concise and state each basis for the motion and limited citations to case or other authority.

(3) Length of Memoranda.

(A) ~~Motions to Dismiss, Motions for Summary Judgment, and Motions for Injunctive Relief:~~ Motions Filed Pursuant to Rules 12 (b), 12 ( c ), 56 and 65 of the Federal Rules of Civil

Procedure: Memoranda supporting or opposing ~~(i) motions to dismiss, (ii) motions for summary judgment, and (iii) motions for injunctive relief~~ motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), 56, and 65 must not exceed twenty-five (25) pages, exclusive of any of the following items: face sheet, table of contents, concise introduction, statements of issues and facts, and exhibits. Reply memoranda in support of any motion must be limited to ten (10) pages, exclusive of face sheet, table of contents, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. No additional memoranda will be considered without leave of court.

(B) All Other Motions: Memoranda supporting or opposing all motions that are not ~~motions to dismiss, for summary judgment, or for injunctive relief~~ filed pursuant to Fed. R. Civ. P. 12(b), 12 (c), 56 or 65 must not exceed ten (10) pages, exclusive of any of the following items: face sheet, table of contents, concise introduction, statements of issues and facts, and exhibits. Reply memoranda in support of any motion must be limited to ten (10) pages, exclusive of face sheet, table of contents, statement of facts, and exhibits and must be limited to rebuttal of matters raised in the memorandum opposing the motion. No additional memoranda will be considered without leave of court.

(4) Filing Times.

(A) ~~Motions to Dismiss and Motions for Summary Judgment:~~ Motions Filed Pursuant to Rules 12(b), 12(c), and 56 of the Federal Rules of Civil Procedure. A memorandum opposing ~~motions filed pursuant to Fed. R. Civ. P. 12(b), 12(c), and 56~~ (i) motions to dismiss, and (ii) motions for summary judgment must be filed within thirty (30) twenty-eight (28) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within ~~ten (10)~~ fourteen (14) days after service of the opposing memorandum. The court may order shorter briefing periods and attorneys may also so stipulate.

(B) ~~All other Motions, including Motions for Injunctive Relief:~~ All Other Motions, Including Motions Filed Pursuant to Rule 65 of the Federal Rules of Civil Procedure. A memorandum opposing any motion that is not ~~a motion to dismiss or for summary judgment~~ a motion filed pursuant to Fed. R. Civ. P. 12(b), 12(c), and 56 must be filed within fifteen (15) fourteen (14) days after service of the motion or within such time as allowed by the court. A reply memorandum to such opposing memorandum may be filed at the discretion of the movant within ~~seven (7)~~ fourteen (14) days after service of the memorandum opposing the motion. The court may order shorter briefing periods and attorneys may also so stipulate.

(5) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a notice with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the notice must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

**(c) Supporting Exhibits to Memoranda.**

If any memorandum in support of or opposition to a motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties.

**(d) Failure to Respond.**

Failure to respond timely to a motion may result in the court's granting the motion without further notice.

**(e) Leave of Court and Format for Lengthy Memoranda.**

If a memorandum is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy memorandum must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved. A lengthy memorandum must not be filed with the clerk prior to entry of an order authorizing its filing. Memoranda exceeding page limitations, for which leave of court has been obtained, must contain under appropriate headings and in the order here indicated:

- (1) a table of contents, with page references, listing the titles or headings of each section and subsection;
- (2) a statement of the issues related to the precise relief sought;
- (3) a concise statement of facts, with appropriate references to the record, relevant to the issues concerning the precise relief sought;
- (4) argument, preceded by a summary, containing the contentions of the party with respect to the issues presented and the reasons for them, with citations to the authorities, statutes, and parts of the record relied on; and
- (5) a short conclusion stating the precise relief sought.

**(f) Oral Arguments on Motions.**

The court on its own initiative may set any motion for oral argument or hearing. Otherwise, requests for oral arguments on motions will be granted on good cause shown. If oral argument is to be heard, the motion will be promptly set for hearing. Otherwise, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

*See DUCivR 56-1 for specific provisions regarding summary judgment motions and memoranda in support and opposition to such motions.*

## **DUCivR 7-4 FILINGS IN ALL ACTIONS SEEKING REVIEW OF A DECISION OF THE COMMISSIONER OF SOCIAL SECURITY**

**Approved by the Rules Committee on May 12, 2009.**

**Published for comment on the court's website June 2009.**

**Reporter's Note: This rule encompasses current practice within the District of Utah for reviewing HHS decisions for the benefit of practitioners and pro se litigants.**

- (a) **Pleadings.** Motions for judgment on the pleadings, for reversal or for summary judgment, or to “affirm or review the Commissioner’s decision” are not appropriate and shall not be filed with the court. The parties shall file the following pleadings in accordance with the scheduling order entered in the case:
- (1) Plaintiff shall file, and serve on opposing counsel, an Opening Brief. In the Opening Brief, plaintiff shall set forth the specific errors upon which plaintiff seeks reversal of the Commissioner’s decision.
  - (2) Defendant shall file, and serve on opposing counsel, an Answer Brief. In the Answer Brief, defendant shall address the errors identified by plaintiff.
  - (3) Plaintiff may file, and serve on opposing counsel, a Reply Brief. In the Reply Brief, plaintiff shall address only those issues raised in defendant’s Answer Brief.

This rule does not preclude the parties from filing other motions they deem proper under the Federal Rules of Civil Procedure.

- (b) **Length of Briefs.** Plaintiff’s Opening Brief and Defendant’s Answer brief must not exceed twenty-five (25) pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. Plaintiff’s Reply Brief must not exceed ten (10) pages. If a Brief is to exceed the page limitations set forth in this rule, leave of court must be obtained. A motion for leave to file a lengthy Brief must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved.

## DUCivR 7-5 HYPERLINKS IN COURT FILINGS

Approved by the Rules Committee on May 12, 2009.

Published for comment on the court's website June 2009.

**Reporter's note: This rule provides guidance on the proper use of internet hyperlinks in pleadings electronically filed with the court. The rule is intended to clarify which links are appropriate and become part of the case record and which links do not become part of the record on appeal. The rule provides guidance on the recommended procedure for incorporating internet material into the case record.**

- (a) **Permissible and Impermissible Hyperlinks.** As a convenience for the court, practitioners are encouraged to utilize hyperlinks in a manner consistent with this rule. For the purposes of this rule, a hyperlink is a reference within an electronically filed document that permits a user to click on the reference so as to be directed to other content.
- (1) **Permissible Hyperlinks.**
- (A) A hyperlink to other portions of the same document and material elsewhere in the record, such as exhibits or deposition testimony, is permissible.
  - (B) A hyperlink to an internet resource containing legal authority from recognized electronic research services, such as Westlaw, Lexis/Nexis or Findlaw and governmental rules and regulations, is permissible.
- (2) **Impermissible Hyperlinks.** A hyperlink to any other internet resource not identified in subsection (a)(1)(B) is impermissible and the contents of such an internet resource shall not be part of the record. If a litigant wishes to include the record material otherwise contained in an impermissible hyperlink, such material must be made part of the record in some other fashion, such as by filing the material as an exhibit or by filing a Notice of Conventional Filing pursuant to § II(E)(7) of the District of Utah CM/ECF Administrative Procedures Manual and filing a copy of the material on a diskette in PDF format.

## **DUCivR 54-2 COSTS: TAXATION OF COSTS AND ATTORNEYS' FEES**

**Approved by the Rules Committee on October 13, 2009.**

**Published for Comment in the October 2009 amendment package.**

**Reporter's note: The rule is amended to reflect the national Time Computation amendments. It also makes the deadline for filing a bill of costs the same as the deadline for filing a motion for attorneys' fees. The rule also sets the time period for filing a reply to the objections.**

### **(a) Bill of Costs.**

Within ~~twenty (20)~~ **fourteen (14)** days after the entry of final judgment, the party entitled to recover costs must file a [bill of costs](#) on a form available from the clerk of court, a memorandum of costs, and a verification of bill of costs under 28 U.S.C. § 1924. The memorandum of costs must (i) clearly and concisely itemize and describe the costs; (ii) set forth the statutory basis for seeking reimbursement of those costs under 28 U.S.C. § 1920; and (iii) reference and include copies of applicable invoices, receipts, and disbursement instruments. Failure to itemize and verify costs may result in their being disallowed. Proof of service upon counsel of record of all adverse parties must be indicated. Service of the bill of costs by mail is sufficient and constitutes notice as provided by Fed. R. Civ. P. 54(d).

### **(b) Objections to Bill of Costs.**

Where a party objects to any item in a bill of costs, such objections must be set forth with any supporting affidavits and documentation and must be filed with the court and served on counsel of record of adverse parties within ~~ten (10)~~ **fourteen (14)** days after filing and service of the bill of costs. **The party requesting the costs may file a reply to specific objections within seven (7) days of service of the objections.**

### **(c) Taxation of Costs.**

Where no objections are filed, the clerk will tax the costs and allow such items as are taxable under law. Where objections are filed, a hearing may be scheduled at the discretion of the clerk to review the bill of costs and the objections to it. Costs taxed by the clerk will be included in the judgment or decree.

### **(d) Judicial Review.**

Taxation of costs by the clerk is subject to review by the court when, under Fed. R. Civ. P. 54(d), a motion for review is filed within ~~five (5)~~ **seven (7)** days of the entry on the docket of the clerk's action.



**(e) Attorneys' Fees.**

Attorneys' fees will not be taxed as costs. Motions for attorneys' fees will be reviewed by the court and awarded only upon order of the court.

**(f) Procedures and Requirements for Motions for Attorneys' Fees.**

Unless otherwise provided by statute or extended by the court under Fed. R. Civ. P. 6(b), a motion for attorneys' fees authorized by law must be filed and served within fourteen (14) days after (i) entry of a judgment or (ii) an appeals court remand that modifies or imposes a fee award. Such motion must conform to the provisions of [DUCivR 7-1](#) of these rules. The motion must (i) state the basis for the award; (ii) specify the amount claimed; and, (iii) be accompanied by an affidavit of counsel setting forth the scope of the effort, the number of hours expended, the hourly rates claimed, and any other pertinent supporting information that justifies the award.

## **DUCivR 56-1 SUMMARY JUDGMENT: MOTIONS AND SUPPORTING MEMORANDA**

**Approved by the rules committee on April 12, 2009.**

**Published for comment on the court's website, April 2009.**

**Reporter's Note: The process for informing the court of supplemental authority was modified in Rule 7-1(b)(5) to require a notice rather than a letter. Rule 56-1 was not amended at that time and still required sending a letter. This amendment makes the two rules consistent.**

### **(a) Motions.**

The original and a copy of a summary judgment motion must be filed with the clerk of court, or presented to the court during proceedings, except as otherwise provided in this rule and in DUCivR 5-1. Motions for summary judgment must set forth succinctly, but without argument, the specific grounds of the judgment sought. Failure to comply with the requirements of this section may result in sanctions that may include (i) returning the motion to counsel for resubmission in accordance with the rule, (ii) denial of the motion, or (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of civil procedure does not meet the requirements of this section.

### **(b) Length and Fact Statement of Summary Judgment Memoranda; Filing Times.**

A motion for summary judgment and the supporting memorandum must clearly identify itself in the case caption and introduction. The memorandum in support of a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts must be numbered and refer with particularity to those portions of the record on which movant relies. Filing times and length of memoranda are governed by DUCivR 7-1(b)(3) and (4).

### **(c) Contested Facts Declared in Summary Judgment Motion.**

A memorandum in opposition to a motion for summary judgment must begin with a section that contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute must be numbered, must refer with particularity to those portions of the record on which the opposing party relies and, if applicable, must state the number of the movant's fact that is disputed. All material facts of record meeting the requirements of Fed. R. Civ. P. 56 that are set forth with particularity in the statement of the movant will be deemed admitted for the purpose of summary judgment, unless specifically controverted by the statement of the opposing party identifying material facts of record meeting the requirements of Fed. R. Civ. P. 56.

**(d) Citations of Supplemental Authority.**

When pertinent and significant authorities come to the attention of a party after the party's memorandum in support of or in opposition to a summary judgment motion has been filed, or after oral argument but before decision, a party may promptly file a ~~letter~~ **notice** with the court and serve a copy on all counsel, setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the ~~letter~~ **notice** must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

**(e) Supporting Exhibits to Memoranda.**

If any memorandum in support of or opposition to a summary judgment motion cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum when it is filed with the court and served on the other parties.

**(f) Failure to Respond.**

Failure to respond timely to a motion for summary judgment may result in the court's granting the motion without further notice.

*See DUCivR 7-1 for guidelines regarding motions and memoranda in general, and DUCivR 7-2 for guidelines on citing unpublished decisions.*

## **DUCivR 72-3 RESPONSE TO OBJECTION TO NONDISPOSITIVE PRETRIAL DECISION**

**Approved by the rules committee on September 9, 2008.**

**Published for comment on the Court's website February, 2009**

**Reporter's Note: This amendment provides for a speedy resolution of discovery disputes when the magistrate judge's order is objected to by a party.**

### **~~(a) Response to Objection to Nondispositive Pretrial Decision:~~**

~~Any party opposing an objection to a magistrate judge's order pursuant to Fed. R. Civ. P. 72(1) and 28 U.S.C. § 636(b)(1)(a) may file a response within ten (10) days after the objection has been filed.~~

### **(b) Stays of Magistrate Judge Orders.**

Pending a review of objections, motions for stay of magistrate judge orders shall be addressed initially to the magistrate judge who issued the order.

### **(b) Ruling on Objections.**

Unless otherwise ordered by the assigned district judge, no response need be filed and no hearing will be held concerning an objection to a magistrate judge's order pursuant to DUCivR 72(a) and 28 U.S.C. § 636(b)(1)(A). The district judge may deny the objection by written order at any time, but may not grant it without first giving the opposing party an opportunity to brief the matter. If no order denying the motion or setting a briefing schedule is filed within 15 days after the objection is filed, the non-moving party shall submit to the judge a proposed order denying the objection.

**~~DU~~CivR 77-3 WAIVER OF NOTICE OF ORDERS ENTERED IN RESPONSE TO STIPULATIONS**

Approved by the rules committee on October 14, 2008.

Published for comment on the Court's website February, 2009

**Reporter's Note:** This rule was enacted in the pre CM/ECF days and was intended to decrease the copying and mailing responsibilities of the clerk's office. With electronic filing, all efilers receive Notices of Electronic Filing and electronic copies of the order. The clerk's office mails out orders to non-efilers but the volume is no longer a burden.

~~When an order is issued under a written stipulation by the parties or their attorneys, or when an order is made in open court in the parties' or their attorneys' presence, the requirement for the clerk to mail notice of entry of the order under Fed. R. Civ. P. 77(d) will be deemed waived by parties unless such mailing is specifically requested.~~

***FED. R. CIV. P. 83 - RULES BY DISTRICT COURTS; JUDGE'S DIRECTIVES:  
ATTORNEYS***

**DUCivR 83-1.1 ATTORNEYS - ADMISSION TO PRACTICE**

Approved by the rules committee on November 18, 2008.

Published for comment on the Court's website February, 2009.

**Reporter's Note: This amendment provides that newly hired assistant Federal Public Defenders have the same opportunity as newly hired assistant United States Attorneys to be admitted by special admission for twelve months, pending their admission to the Utah State Bar.**

Additional amendments approved by the rules committee on April 14, 2009.

Published for comment on the Court's website April, 2009.

**Reporter's Note: Two additional amendments were made. The first amendment requires a certificate of good standing for attorneys who are admitted pro hac vice. This amendment is made to satisfy a directive from the Judicial Conference to verify an attorney's qualifications to practice law. The second amendment notes the that Court has endorsed the Utah Standards of Professionalism and Civility.**

**(a) Practice Before the Court.**

Attorneys who wish to practice in this court, whether as members of the court's bar or pro hac vice in a particular case, must first satisfy the admissions requirements set forth below.

**(b) Admission to the Bar of this Court.**

(1) Eligibility. Any attorney who is an active member in good standing of the Utah State Bar is eligible for admission to the bar of this court.

**(2) Admissions Procedure.**

(A) Registration. Applicants must file with the clerk a completed and signed registration card available from the clerk and pay the prescribed admission fee.

(B) Motion for Admission for Residents. Motions for admission of bar applicants must be made orally or in writing by a member of the bar of this court in open court. The applicant(s) must be present at the time the motion is made.

(C) Motion for Admission for Nonresidents. Motions for admission of bar applicants who reside in other federal districts, but who otherwise conform to [sections \(a\)](#) and [\(d\)](#) of this rule, must be made orally or in writing by a member of the bar of this court before a judge of this court. The motion must indicate the reasons for seeking nonresident admission. Where the applicant is not present at the time the motion is made, and pursuant to the motion being

granted, the applicant must submit to the clerk of court an affidavit indicating the date and location the applicant was administered this court's attorney's oath by a U.S. district or circuit court judge.

(D) Attorney's Oath. When the motion is granted, the following oath will be administered to each petitioner:

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States (and the constitution of the State of Utah;) that I will discharge the duties of attorney and counselor at law as an officer of (the courts of the State of Utah and) the United States District Court for the District of Utah with honesty and fidelity; and that I will strictly observe the rules of professional conduct adopted by the United States District Court for the District of Utah."<sup>5</sup>

(E) Attorney Roll. Before a certificate of admission is issued, applicants must sign the attorney roll administered by the clerk. Members of the court's bar must advise the clerk in writing immediately if they have a change in name, e-mail address, firm, firm name, or office address. The notification must include the attorney's Utah State Bar number.

(3) Pro Bono Service Requirement. Any attorney who is admitted to the bar of this court must agree, as a condition of such admission, to engage in a reasonable level of pro bono work when requested to do so by the court.

**(c) Active Member Status Requirement.**

Attorneys who are admitted to the bar of this court under the provisions of section (b) of this rule and who practice in this court must maintain their membership on a renewable basis as is set forth in [DUCivR 83-1.2](#).

**(d) Admission Pro Hac Vice**

Attorneys who are not active members of the Utah State Bar but who are members in good standing of the bar of the highest court of another state or the District of Columbia may be admitted pro hac vice upon completion and acknowledgment of the following:

**(1) Application and Fee.**

Applicants must complete and submit to the clerk an [application form](#) available from the clerk of court. Such application must include the case name and number, if any, of other pending cases in this court in which the applicant is an attorney of record. For nonresident applicants, the name, address, Utah State Bar identification number, telephone number, and written consent of an active local member of this court's bar to serve as associate counsel must be filed with the application. The application also must be accompanied by payment of the prescribed admission fee and a certificate of good standing in the bar of the highest court of another state or the District of Columbia. Pursuant to the Judicial Conference Schedule of Fees, nonresident

<sup>5</sup> For ceremonies conducted jointly with the Utah State Bar, the oath also will reference the Utah State Constitution and the Utah State Courts.

United States attorneys and attorneys employed by agencies of the federal government are exempt from the pro hac vice fee requirement. If a federal government attorney is being admitted pro hac vice because the United States Attorney for the District of Utah is recused from the case, the associate local counsel requirement is waived.

(2) Motion for Admission.

Applicants must present a written or oral motion for admission pro hac vice made by an active member in good standing of the bar of this court. For nonresident applicants, unless otherwise ordered by a judge of this court, such motion must be granted only if the applicant associates an active local member of the bar of this court with whom opposing counsel and the court may communicate regarding the case and upon whom papers will be served. Applicants who are new residents, unless otherwise ordered by the court, must state either (i) that they have taken the Utah State Bar examination and are awaiting the results, or (ii) that they are scheduled to take the next bar examination.

(e) Attorneys for the United States.

Attorneys representing the United States government, or any agency or instrumentality thereof, **including the Federal Public Defender's Office**, and who reside within this district are required to be admitted to this court's bar before they will be permitted to practice before this court. Notwithstanding this rule and provided they are at all times members of the bar of another United States district court, resident assistant United States attorneys, ~~and~~ resident attorneys representing agencies of the government **and resident assistant Federal Public Defenders** will be given twelve (12) months from the date of their commission in which to take and pass the Utah State Bar examination. During this period, these attorneys may be admitted provisionally to the bar of this court. Attorneys who (i) are designated as "Special Assistant United States Attorney" by the United States Attorney for the District of Utah or "Special Attorney" by the Attorney General of the United States, and (ii) are members in good standing of the highest bar of any state or the District of Columbia, may be admitted on motion to practice in this court without payment of fees during the period of their designation. The requirements of this rule do not apply to judge advocates of the armed forces of the United States representing the government in proceedings supervised by judges of the District of Utah.

(f) Pro Se Representation.

Any party proceeding on its own behalf without an attorney will be expected to be familiar with and to proceed in accordance with the rules of practice and procedure of this court and with the appropriate federal rules and statutes that govern the action in which such party is involved.

(g) Standards of Professional Conduct.

All attorneys practicing before this court, whether admitted as members of the bar of this court, admitted pro hac vice, or otherwise as ordered by this court, are governed by and must comply with the rules of practice adopted by this court, and unless otherwise provided by these rules,



with the Utah Rules of Professional Conduct, as revised and amended and as interpreted by this court. The court endorses the Utah Standards of Professionalism and Civility ( Appendix \_\_ ) to guide attorney conduct in cases and proceedings in this court.

## **DUCrimR 12-1 PRETRIAL MOTIONS: TIMING, FORM, HEARINGS, MOTIONS TO SUPPRESS, CERTIFICATION, AND ORDERS**

**Approved by the Rules Committee on October 13, 2009.**

**Published for Comment in the October 2009 amendment package.**

**Reporter's Note: Time computation amendments are made to make this rule consistent with the changes in the civil motions rule and with the principles of the national time computation amendments.**

**(a) Timing.**

Pretrial motions must be made prior to arraignment or as soon thereafter as practicable but not later than ~~ten (10)~~ **fourteen (14)** days before trial, or at such other time as the court may specify. At the arraignment, the magistrate judge may set, at the discretion of the district judge, a cutoff date for filing pretrial motions.

**(b) Form.**

Motions must set forth succinctly, but without argument, the specific grounds of the relief sought. Failure to comply with the requirements of this section may result in sanctions that may include (I) returning the motion to counsel for resubmission in accordance with the rule; (ii) denial of the motion; or, (iii) other sanctions deemed appropriate by the court. Merely to repeat the language of a relevant rule of criminal procedure does not meet the requirements of this section. Except for suppression motions, if the motion is based on supporting claims of facts, affidavits addressing the factual basis for the motion must accompany the motion. The opposing party may file with its response counter-affidavits. The court, in its discretion, may set a hearing for any such motion.

**(1) Supporting Memoranda.**

**(A) Memoranda of Supporting Authorities.** Except as noted below or otherwise permitted by the court, each motion must be accompanied by a memorandum of supporting authorities that is filed or presented with the motion. Although all motions must state grounds for the request and cite applicable rules, statutes, or other authority justifying the relief sought, no memorandum of supporting authorities is required for the following types of motions:

- (i) to extend time for the performance of an act, whether required or permitted, provided the motion is made prior to expiration of the time originally prescribed or previously extended by the court;
- (ii) to continue either a pretrial hearing or motion hearing; and
- (iii) for motions to suppress unless otherwise directed by the court.

**(B) Concise Memoranda.** Memoranda must be concise and state each basis for the motion and limited citations.

**(C) Length of Memoranda; Filing Times.** There are no page limits to memoranda. The court, in consultation with the attorneys for the government and for the defense, will set appropriate briefing schedules for motions on a case-by-case basis. Unless otherwise ordered by the court, a memorandum opposing a motion must be filed within ~~fifteen (15)~~ **fourteen (14)** days after service of the motion. A reply memorandum may be filed at the discretion of the movant within seven (7) days after service of the memorandum opposing the motion. A reply

memorandum must be limited to rebuttal of matters raised in the memorandum opposing the motion. Attorneys may stipulate to shorter briefing periods.

(D) Citations of Supplemental Authority. When pertinent and significant authorities come to the attention of a party after the party's memorandum has been filed, or after oral argument but before decision, a party may promptly file a letter with the court and serve a copy on all counsel setting forth the citations. There must be a reference either to the page of the memorandum or to a point argued orally to which the citations pertain, but the letter must state, without argument, the reasons for the supplemental citations. Any response must be made, filed promptly, and be similarly limited.

(2) Failure to Respond. Failure to respond timely to a motion may result in the court's granting the motion without any further notice.

(3) Oral Argument on Motions. The court may set any motion for oral argument or hearing. Attorneys for the government or for the defense may request oral argument in their initial motion or at any other time, and for good cause shown, the court will grant such request. If oral argument is to be heard, the motion will be promptly set for hearing after briefing is complete. In all other cases, motions are to be submitted to and will be determined by the court on the basis of the written memoranda of the parties.

**(c) Notification of Oral Testimony**

When filing a pretrial motion or response that requires a hearing at which oral testimony is to be offered, the moving or responding attorney must (i) so state in writing; (ii) indicate the names of witnesses, if known; and (iii) estimate the time required for presentation of such testimony. The opposing attorney must give written notice of rebuttal witnesses and estimate the time required for rebuttal.

**(d) Motion to Suppress Evidence**

A motion to suppress evidence, for which an evidentiary hearing is requested, shall state with particularity and in summary form without an accompanying legal brief the following: (i) the basis for standing; (ii) the evidence for which suppression is sought; and (iii) a list of the issues raised as grounds for the motion. Unless the court otherwise orders, neither a memorandum of authorities nor a response by the government is required. At the conclusion of the evidentiary hearing, the court will provide reasonable time for all parties to respond to the issues of fact and law raised in the motion unless the court has directed pretrial briefing or otherwise concludes that further briefing is unnecessary.

**(e) Certification by Government**

Where a statute or court requires certification by a government official about the existence of evidence, such certification must be in writing under oath and filed with the clerk of court.

**(f) Preparation and Entry of Order**

When the court orders appropriate relief on a pretrial motion on behalf of any party, the prevailing party must present for the court's review and signature a proposed written order specifying the court's ruling or disposition. Unless otherwise determined by the court, proposed orders must be served upon all counsel for all parties for review and approval as to form prior to being submitted to the court for review and signature. Approval will be deemed waived if no

objections have been filed with the clerk within five (5) days after personal or email service, or eight (8) days after service by mail.

**DUCrimR 47-1 MOTIONS, SUPPORTING MEMORANDA, AND USE OF UNPUBLISHED OPINIONS**

**Approved by the Rules Committee on September 9, 2008.**

**Published for comment on the court's website February 2009.**

**Reporter's note: This rule is deleted because it conflicts with DUCrimR 12-1 which specifically addresses motions in criminal cases.**

~~The preparation and filing of motions and supporting memoranda in criminal matters is governed by [DUCivR 7-1](#). The use of unpublished decisions in criminal motions and supporting memoranda is governed by [DUCivR 7-2](#).~~

**DUCrimR 58-1 APPEALS FROM MAGISTRATE JUDGE DECISIONS IN MISDEMEANORS AND PETTY OFFENSE CASES.**

**Approved by the Rules Committee on October 13, 2009.**

**Published for Comment in the October 2009 amendment package.**

**Reporter's Note: Time computation amendments are made to be consistent with the Federal Rules of Criminal Procedure in the time for filing the notice of appeal. The briefing times are modified to be consistent to the principles of the time computation rules.**

**(a) Time Frames, Filing, and Service Requirements.**

(1) Notices of appeal on decisions of the magistrate judge must be filed with the clerk of court within ~~ten (10)~~ **fourteen (14)** days after judgment and/or decision. An interlocutory appeal may be taken under Fed. R. Crim. P. 58(g)(2)(A).

(2) The appellant's brief is due within ~~fifteen (15)~~ **fourteen (14)** days after the filing of the notice of appeal. The original must be filed with the clerk of court and a copy served on opposing counsel.

(3) The appellee's brief is due within ~~fifteen (15)~~ **fourteen (14)** days after service of appellant's brief. The original must be filed with the clerk of court and a copy served on opposing counsel.

(4) The appellant may file a reply brief within ~~five (5)~~ **seven (7)** days after service of appellee's brief.

**(b) Page Limitations.**

Briefs on appeal must not exceed twenty (20) pages except with permission of the court.

Appellant reply briefs must not exceed ten (10) pages except with permission of the court.

**(c) Action by the Court.**

All appeals from magistrate judge decisions will be decided by the court without a hearing, unless otherwise ordered by the court on its own motion or, at its discretion, upon written request of appellant.